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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The report covers the activities of the Working Group from September 2017 to July 2018 and focuses on the recruitment of children by non-State armed groups, including mercenaries and private military and security companies. In addressing this issue, the Working Group refers to the international legal framework and non-binding initiatives on the use of children in armed conflicts and presents some of its findings from past country visits. It also addresses issues, including recruitment practices and motivational factors, that result in children being associated with non-State armed groups. The report highlights the human rights impact of this phenomenon and provides recommendations addressed to States, private military and security companies, non-State armed groups, the International Code of Conduct for Private Security Service Providers' Association and the Montreux Document Forum.

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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

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I. Introduction

1. The present report is submitted pursuant to Commission on Human Rights resolution 2005/2, in which the Commission established the mandate of the Working Group, and Human Rights Council resolution 33/4, in which the Council further renewed the mandate. The report covers the activities of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination since its previous report to the Human Rights Council (A/HRC/36/47). These include regular sessions, country visits and other activities of the members during the reporting period.

2. In addition, the present report contains the outcome of a study of the Working Group on the phenomenon of the recruitment and use of children by non-State armed groups, including mercenaries and private military and security companies.

3. The Working Group is mandated by the Human Rights Council to monitor and study the effects of mercenaries and mercenary-related activities as well as the impact of the activities of private military and security companies on the enjoyment of human rights. In past years, the Working Group has conducted various types of research and studies to assess the linkages between mercenarism and foreign fighters, devoting attention to the human rights impact of these activities; recruitment practices; and motivational factors, particularly economic or financial gains, that draw foreign fighters into engaging in armed conflict. The findings of the Working Group on these topics were elaborated in its past reports to the Human Rights Council and the General Assembly.[1] The Working Group has found similarities and linkages between mercenarism and the foreign fighter phenomenon that justify classifying the latter as a mercenary-like activity.

4. Through its various official country visits, the Working Group has had the opportunity to assess closely the situations in which mercenaries, foreign fighters and private military and security companies operate. Among the issues identified during these visits, the Working Group is particularly concerned by the widespread phenomenon of recruitment and use of children by non-State armed groups, including foreign fighters, either to actively participate in hostilities or to provide direct support. In its visit to Côte d'Ivoire, the Working Group found that children who were exposed to a culture of violence and subsequently engaged in criminal activities as a result were also susceptible to being recruited as combatants. Some of those children later became mercenaries or joined criminal gangs (see A/HRC/30/34/Add.1, para. 54). In the Central African Republic, the Working Group found that some children who had been connected with armed groups later joined armed rebellions in neighbouring countries as foreign fighters (see A/HRC/36/47/Add.1, para. 57).

5. As part of the above-mentioned study, on 30 November 2017, the Working Group held a private expert consultation in Geneva to collect and discuss information. In the present report, the Working Group presents the outcome of the study. The report sets out the relevant international legal framework and complementary non-binding initiatives. It explores the associated motivational factors that result in children being associated with non-State armed groups. The report provides an analysis of the human rights impact of this phenomenon, including from a gender perspective. It also discusses issues related to the alleged recruitment of former child soldiers by private military and security companies. Following an examination of responses to the phenomenon, the report concludes with recommendations for States and other relevant stakeholders.

[1] See A/70/330, A/71/318, A/HRC/33/43/Add.1-3 and A/HRC/36/47/Add.1.

II. Activities of the Working Group

6. During the period under review, the Working Group held three regular sessions: two in Geneva and one in New York. It held meetings with representatives of States, civil society partners and external experts.

A. Thirty-second, thirty-third and thirty-fourth sessions of the Working Group and new members

7. The thirty-second session of the Working Group took place in Geneva from 27 November to 1 December 2017. On 30 November 2017, the Working Group held an expert consultation on the recruitment of children by non-State armed groups, including mercenaries, and private military and security companies. The Working Group is grateful to all the participants who contributed to the discussion.

8. The thirty-third session took place in Geneva from 3 to 6 April 2018. During the session, members of the Working Group held bilateral meetings with representatives of Member States and other relevant interlocutors.

9. On 30 April 2018, the term of office of Working Group members Patricia Arias, Elzbieta Karska and Anton Katz officially ended. These members had served the Working Group for just over six years and had made valuable contributions to various initiatives and activities under the Working Group's mandate.

10. On 1 May 2018, the Human Rights Council, at its thirty-seventh session, appointed three new members of the Working Group: Lilian Bobea (Dominican Republic), Chris Kwaja (Nigeria) and Jelena Aparac (Croatia). The Chairperson-Rapporteur of the Working Group, Mr. Rona, extended a warm welcome to the new members and a teleconference was held between the outgoing and incoming members to exchange information and share ideas about the Working Group's mandate.

B. Country visits

11. Country visits form a central aspect of the work of the Working Group. Visits provide an opportunity for the Working Group to consult in situ with Government officials and other actors in the country on issues related to its mandate. Through country visits, the Working Group can also identify and facilitate the exchange of good practices. Despite various visit requests and efforts made to follow up on the pending requests, the Working Group has been facing challenges in receiving timely and favourable responses from States to its requests for country visits. In this regard, the Working Group would like to recall Human Rights Council resolution 16/21, in which the Council urged States to cooperate and assist special procedures by responding in a timely manner to requests for information and visits. The Working Group therefore calls upon all States, particularly those that have extended standing invitations to special procedure mandate holders, to give serious consideration to responding favourably to its requests for country visits.

12. During the reporting period, the Working Group conducted official visits to Ghana, from 8 to 15 December 2017 (see A/HRC/39/49/Add.1), to Chad, from 16 to 23 April 2018 (see A/HRC/39/49/Add.2), and to Austria, from 21 to 29 June 2018.

C. Other activities of the Working Group members

13. On 16 November 2017, the Chairperson-Rapporteur, Mr. Rona, participated as a speaker in a panel event entitled "Private military companies: armies of the future?". The event was organized by the King's Think Tank at King's College London. Mr. Rona delivered a presentation on the findings of the Working Group in relation to private military and security companies, including the regulatory gaps in national legislation relating to these companies; the United Nations stance on private military and security companies; and the way forward for the Working Group. During the event Mr. Rona also provided his

views on whether private military and security companies could be used alongside national armies and whether they would be appropriate for peacekeeping missions.

14. On 27 and 28 February 2018, Ms. Arias participated in the Montreux Document Forum Regional Meeting in Costa Rica. On behalf of the Working Group, she delivered a presentation on the private military and security industry in Latin America and the Caribbean, entitled "Introduction to challenges and opportunities for regulation".

15. On 18 April 2018, Mr. Rona participated as a speaker in a panel discussion at the seventeenth session of the Permanent Forum on Indigenous Issues in New York. Mr. Rona delivered a presentation on private military and security companies in extractive industries and their impact on human rights and indigenous peoples' rights. In his remarks, he highlighted human rights concerns relating to the use of private military and security companies in extractive industries and its impact on indigenous peoples' land rights. He also addressed the gaps in the existing regulatory framework and called for robust regulation to ensure accountability.

16. From 16 to 24 May 2018, Mr. Rona conducted an academic visit to Brazil. Mr. Rona gave lectures at universities in Rio de Janeiro, Dourados and Belem on the Human Rights Council's special procedures system, in particular on the Working Group's mandate. He also met with many individuals familiar with the operation of private militias in the urban favelas and private security companies working for agribusiness interests in territories claimed by indigenous peoples.

17. On 7 June 2018, Mr. Rona participated as a speaker in a panel discussion on current developments in other processes relating to the regulation of private military and security companies, during the fourth plenary meeting of the Montreux Document Forum in Geneva.

III. Recruitment of children by non-State armed groups, including mercenaries, and private military and security companies

A. International legal framework and complementary non-binding initiatives

18. The recruitment and use of children in armed conflicts is one of the six grave violations identified and condemned by the Security Council (see Council resolution 1261 (1999)). International humanitarian law, international human rights law and international criminal law all prohibit both States and non-State armed groups from recruiting or using children in hostilities.

19. International humanitarian law applicable in armed conflicts recognizes children's rights and protects their dignity. More specifically, article 77 (2) of the Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international armed conflicts (Additional Protocol I) provides that the parties to the conflict are to take all feasible measures in order that children who have not attained the age of 15 years do not take a direct part in hostilities and that, in particular, they are to refrain from recruiting them into their armed forces. Article 4 (3) (c) of the Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Additional Protocol II), which is also applicable in non-international armed conflict, provides that children who have not attained the age of 15 years are neither to be recruited in the armed forces or groups, nor allowed to take part in hostilities. This provision awards a broad scope of protection to children under the age of 15 years, as it does not draw any distinction between "direct" and "indirect" participation in hostilities. In addition, children fall within the general protection of civilians under this set of laws. Furthermore, customary international humanitarian law recognizes the prohibition

of recruitment of child soldiers in both international and non-international armed conflicts.[2] This is applicable to all actors in armed conflict, including private military and security companies.

20. International human rights law, applicable both in peacetime and in armed conflicts, provides complementary protection. Article 38 (3) of the Convention on the Rights of the Child also provides that States parties are to refrain from recruiting any person who has not attained the age of 15 years into their armed forces. Further, article 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict raises the age of possible recruitment of persons into armed forces and their participation in hostilities. It prohibits armed groups that are distinct from the armed forces of a State from recruiting or using in hostilities persons under the age of 18 years. The same article obliges States to take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices. The Special Court for Sierra Leone stated in its decision *Prosecutor v. Sam Hinga Norman* that, for the purposes of implementation of the Convention on the Rights of the Child and its Optional Protocol, all "feasible measures" and "appropriate legislation" were at the disposal of States to prevent child recruitment; it would seem that these also include criminal sanctions as measures of enforcement.[3]

21. Under international criminal law, the Rome Statute of the International Criminal Court provides that conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities constitutes a war crime in both international and non-international armed conflict. This was also confirmed by its case law (see *Prosecutor v. Thomas Lubanga Dyilo*, case No. ICC-01/04-01/06). The adopted terminology of "participate actively" comprises not only combat activities but also activities such as sabotage or spying.

22. It is recognized under international law that the prohibition of child recruitment also entails individual criminal responsibility. In this respect, the Special Court for Sierra Leone stated that, in creating the International Criminal Tribunal for Rwanda (ICTR) Statute, the Security Council explicitly recognized for the first time that serious violations of fundamental guarantees led to individual criminal liability and that that recognition had been confirmed later on by decisions and judgments of the ICTR; it added that the prohibition of child recruitment constituted a fundamental guarantee and that, although it was not enumerated in the ICTR or International Criminal Tribunal for the Former Yugoslavia (ICTY) statutes, it shared the same character and was of the same gravity as the violations that were explicitly listed in those statutes.[4] It is worth highlighting that, in terms of culpability, the legal framework does not make distinctions according to the path by which the child entered the armed group. In other words, when it comes to the culpability of the adult recruiter, "voluntary" enlistment and forcible abduction into an armed group are treated identically. The "consent" of the minor is no defence for the adult who is accused.[5]

23. In addition, at the international level, efforts have been made to develop non-binding principles aiming to engage the private sector in respecting and protecting children's rights. For example, the multi-stakeholder initiative Children's Rights and Business Principles requires companies not to recruit or use children in security arrangements either directly or through private or public security service providers (principle 8).

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[2] See International Committee of the Red Cross, "Customary IHL database", available at ihl-databases.icrc.org/customary-ihl/eng/docs/home (accessed 9 July 2018), rules 136 and 137.

[3] Decision on preliminary motion based on lack of jurisdiction (child recruitment) (case No. SCSL-2004-14-Ar72(E)) of 31 May 2004.

[4] Ibid.

[5] Mark Drumbl and Gabor Rona, "Navigating challenges in child protection and the reintegration of children associated with armed groups", in *Cradled by Conflict: Child Involvement with Armed Groups in Contemporary Conflict*, Siobhan O'Neil and Kato Van Broeckhoven, eds. (New York, United Nations University, 2018), pp. 210–232. Available at reliefweb.int/sites/reliefweb.int/files/resources/Cradled_by_Conflict.pdf.

24. Private military and security companies operating in areas affected by armed conflict may risk being involved in unlawfully recruiting children. In this regard, the Committee on the Rights of the Child stresses in its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights that both home and host States should introduce and implement national legislation that includes a specific prohibition on such companies recruiting children or using them in hostilities; requirements for effective measures to protect children from violence and exploitation; and mechanisms for holding personnel accountable for abuses of children's rights.

25. In the absence of an international legally binding instrument regulating the activities of private military and security companies, the Working Group reiterates its call for such an instrument to ensure consistent regulation worldwide and adequate protection of the human rights of all affected by the activities of such companies. The Working Group is of the view that regulation of non-State actors, such as private security providers, requires a multidimensional approach that also includes industry-led efforts to improve compliance with human rights standards. In this regard, the Working Group is pleased at the development of self-regulation and voluntary initiatives, such as the Montreux Document Forum and the International Code of Conduct for Private Security Service Providers, which have clearly led to improved standards across the industry. For instance, concerning the selection and vetting of personnel, the International Code of Conduct for Private Security Service Providers clearly requires the commitment from its signatory companies not to hire individuals under the age of 18 years to carry out security services.

B. Mercenaries and foreign fighters

26. Based on its study on the phenomenon of foreign fighters, the Working Group submitted two reports to the General Assembly examining the linkages between mercenaries and foreign fighters and their impact on human rights and the right of peoples to self-determination. While there is no legal definition of foreign fighters, the Working Group analysed the similarities and differences between these two actors in terms of recruitment, motivation and their impact on human rights. In its report, the Working Group concluded that both mercenaries and foreign fighters were external actors that intervened in an armed conflict (see A/70/330, para. 86). The Working Group further asserted that foreign fighters represented a possible contemporary form of mercenarism or mercenary-related activities (see A/70/330, para. 88 and A/71/318, para. 77).

27. As part of its study on the phenomenon of foreign fighters, members of the Working Group conducted country visits to Tunisia (see A/HRC/33/43/Add.1), Belgium (see A/HRC/33/43/Add.2), Ukraine (see A/HRC/33/43/Add.3) and the European Union (see A/HRC/33/43/Add.4). During these visits, the Working Group observed that the root causes of individuals, including children, being vulnerable to radicalization were poor social integration, perceived procedural injustice and perceived discrimination in society (see A/HRC/33/43/Add.2, para. 40).

C. Recruitment practices

28. Around the world, hundreds of thousands of children are associated with non-State armed groups, including foreign fighters. These boys and girls are forced to serve as combatants, servants, messengers or sex slaves or in other roles. They are associated with non-State armed groups in many different ways. Some boys and girls are abducted, trafficked or forced into conscription; some are born into non-State armed groups; some seem to join these groups voluntarily for various reasons.

29. During its visit to the Central African Republic in 2016, the Working Group learned that children had become increasingly likely to become victims of armed groups as the conflicts of 2003 and 2013 continued. Between 6,000 and 10,000 children had become connected with armed groups, whether forcibly recruited as child soldiers or used for sexual slavery and other purposes (see A/HRC/36/47/Add.1, para. 57). In Tunisia, the Working Group was informed that non-State armed groups recruited foreign children under the age

of 18. Those individuals were recruited through social media, smuggling networks operating across borders and direct contact with extremists operating in various towns. Boys as young as 17 years were recruited to fight in the Syrian Arab Republic. There were also cases of fathers taking children to that country. In addition, there have been allegations of human trafficking in camps in the Syrian Arab Republic run by foreign fighters, where children were reportedly sold to people in other countries (see A/HRC/33/43/Add.1, para. 63). In Belgium, the Working Group learned of a case of a 13-year-old child being recruited by foreign fighters (see A/HRC/33/43/Add.2, para. 21).

D. Motivational factors that result in children being associated with non-State armed groups

30. Children are lured into armed groups for various interrelated reasons. Across conflicts, there is no evidence of any single motivation or cause for child association with armed groups.[6] Socioeconomic conditions, including poverty, duress, other forms of deprivation of resources and opportunities and physical and financial insecurity, are traditionally seen as the major factors behind children's enlistment in non-State armed groups. Some children living in conflict-affected areas become associated with these groups in order to be reunited with their family members or simply because of a lack of alternatives, especially when armed groups are in physical and economic control of the community. In the Democratic Republic of the Congo, some girls joined armed groups to escape the constant and terrifying attacks on their villages. Others joined to escape poverty and hunger. These girls were reportedly lured to join armed groups as they believed from their peers that they could obtain money and goods from the groups.[7] A 17-year-old Iraqi boy joined Islamic State in Iraq and the Levant (ISIL) for the purpose of receiving free medical treatment for his heart condition.[8]

31. Research shows that children living in areas controlled by armed groups, such as Syrian children living under the control of ISIL, often cited the need to support themselves and their families as a reason for joining these groups. On the other hand, children and young people who travel from outside appear less motivated by financial incentives. Indeed, many of those travelling from outside the Syrian Arab Republic actually lose money by joining an armed group, as they have to pay to be smuggled into the country.[9] The Working Group acknowledges that certain structural motivating factors alone cannot justify the phenomenon of foreign children from peaceful and stable settings being lured into terrorist groups in armed conflicts. One of the focuses of the Working Group's study on foreign fighters was to examine the motivational factors causing many individuals to leave their country of origin or habitual residence to become involved in violence as part of an insurgency or non-State armed group in an armed conflict. Some of those foreign children joined armed groups for ideological reasons, and some joined because of internal feelings, for example a feeling of revenge, a sense of purpose or a need for a sense of belonging.

32. As demonstrated by those children travelling from peaceful places to fight in armed conflicts, although the vast majority of children associated with armed groups are forcibly abducted or recruited, there are a few cases where children seem to have joined armed groups "voluntarily". Regarding these "voluntary" recruits, search shows that, even if it appears voluntary to the individual child, from a psychological and social point of view children's choice to join and remain in armed groups cannot be considered "voluntary". For

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[6] Siobhan O'Neil and Kato Van Broeckhoven, "The road to a better future", in O'Neil and Van Broeckhoven, *Cradled by Conflict*.

[7] Child Soldiers International, "What the girls say: improving practices for the demobilisation and reintegration of girls associated with armed forces and armed groups in Democratic Republic of Congo" (London, 2017). Available at www.child-soldiers.org/Handlers/Download.ashx?IDMF=e57e9cb2-cd70-4dc2-8681-e29bc6f3622b.

[8] Mara Revkin, "I am nothing without a weapon — understanding child recruitment and use by armed groups in Syria and Iraq", in O'Neil and Van Broeckhoven, *Cradled by Conflict*, pp. 103–140.

[9] O'Neil and Van Broeckhoven, "The road to a better future".

various reasons, children have no or limited access to information concerning the consequences of their choice; they neither control nor fully comprehend the structures and forces that they are dealing with; they have little knowledge and understanding of the medium- and long-term consequences of their actions.[10] Furthermore, children are often drugged or submitted to a process of "brainwashing" in order to control them. Research shows that the difficulty of maintaining neutrality in conflict areas also creates incentives for children to join armed groups, especially when there is no benefit to maintaining neutrality because even those who try to remain neutral are perceived by others as aligning with one side or the other.[11]

33. In the present report, the Working Group focuses on the economic and material motivations of the recruitment of children by non-State armed groups. From the perspective of non-State armed groups, children are not only recruited as substitutes for adults, but sometimes have comparative advantages over them. The rationale behind the choice of child recruits generally lies in the assumption that, owing to their young age and immaturity, children can be easily intimidated, manipulated and indoctrinated. They tend to listen to the commanders and follow their orders without questioning them. In addition, children are also seen as less costly than adult recruits, because they receive fewer resources and less equipment. Children are seen as cheap labour because they are willing to work for lower wages than adults, and they are usually too young to have dependents — spouses and children — for whom some non-State armed groups provide additional benefits. For example, even though ISIL generally pays the same salary to adult fighters and those under 18 years, adult fighters receive an additional stipend for spouses and children, and sometimes housing for their families.[12]

34. Many armed groups take advantage of the poverty and financial insecurity of the populations affected by armed conflicts to attempt to recruit young children. Their offers seem tempting for poor children who live in an environment of high insecurity. For example, children fighting with ISIL are reportedly paid like adults (see A/68/878, para. 145). In the Syrian Arab Republic, many children continue to be recruited by non-State armed groups for modest salaries to support their families. The promised monthly salary is an incentive for impoverished families to agree to the recruitment. In Al-Bab, Aleppo, ISIL offers between $100 and $150 monthly to young men and boys, some only 14 years old, if they join (see A/HRC/33/55, para. 117). A former combatant of the Free Syrian Army and Jhabat Al-Nusra indicated in an interview that he had joined the FSA at the age of 14 years and later switched sides to Jhabat Al-Nusra because it was the highest-paying armed group in his area. He stated that he did not care about the ideology of either group and it was always just a matter of business. According to this former combatant, many parents encouraged their children to attend the Jhabat Al-Nusra indoctrination courses in order to obtain the free food that the group provided for students. Some of the students went on to enlist as fighters just because they wanted food and money.[13] Children living in towns and villages without access to education are disproportionately vulnerable to recruitment. Some child soldiers are even recruited by non-State armed groups from refugee camps in neighbouring countries. In this context, economic incentives also contribute to the recruitment of these children.

35. The Working Group stresses that the incentives for children to be associated with non-State armed groups may also go beyond monetary rewards. Some groups seek to recruit local or foreign children or entire foreign families by providing food, goods,

[10] Elisabeth Schauer and Thomas Elbert, "The psychological impact of child soldiering", in *Trauma Rehabilitation After War and Conflict*, Erin Martz, ed. (New York, Springer-Verlag, 2010), pp. 311–360.

[11] Siobhan O'Neil, "Trajectories of children into and out of non-State armed groups", in O'Neil and Van Broeckhoven, *Cradled by Conflict*; Revkin, "I am nothing without a weapon"; Hilary Matfess, Graeme Blair and Chad Hazlett, "Beset on all sides: children and the landscape of conflict in North East Nigeria", in O'Neil and Van Broeckhoven, *Cradled by Conflict*; Drumbl and Rona, "Navigating challenges in child protection".

[12] Revkin, "I am nothing without a weapon".

[13] Ibid.

weapons, accommodation and other types of material gain. For example, ISIL is attracting foreign families by providing food, salaries and accommodation worth over $1,000 a month to those who immigrate with their families to join the movement. As some have observed, the more these groups are successful at creating a whole new society, the more they are able to attract entire families.[14]

E. Human rights impact

36. The recruitment and use of children in armed conflicts by non-State armed groups is itself a grave violation of international law. Child victims who have been forced or lured into armed groups suffer a broad range of human rights abuses. These include abuses related to their right to life, right not to be subjected to torture or sexual abuse, right to be protected from economic exploitation and from performing hazardous work, right to the enjoyment of the highest attainable standard of health, right to education and right to freedom of thought, conscience and religion. The abusive practices children experience when they are associated with non-State armed groups amplify one another, and a child who experiences one is likely to experience others.[15]

37. Once recruited, child soldiers are forced to carry out various tasks. Some of them may serve as porters, cooks or domestic workers; some are ordered to loot or steal; some are forced to beat and kill civilians; some children are sent into combat on the front lines, or even to conduct suicide missions. Most of the girls are raped, used as sex slaves or forced to be "wives" to other soldiers in the group. Some armed groups even force child soldiers to commit cruelties and atrocities against their own family or community members. Such practices were intended to ensure that these children would have no family to escape to and that they would be stigmatized and not accepted back by their communities. The perception of the community about the armed group with which the children associate and the roles the children played in the armed group does indeed hamper the reintegration and rehabilitation process of these former child soldiers. The terror inflicted in the community also creates collective trauma. Research shows that community leaders, elders and local religious leaders, who are traditionally expected to play an essential role in the reintegration process of former child soldiers, are now themselves affected by the violence, thus impeding the traditional social healing or coping mechanisms.[16]

38. Negative attitudes towards former child soldiers create obstacles in reintegrating them socially and economically into their local communities. The risk of re-recruitment increases when these former combatants are not provided with alternative job opportunities. Furthermore, in a society where there is a significant number of former child soldiers, the failure of rehabilitation and reintegration may have a negative impact on the economic and social development of the society.

39. The Working Group also notes with great concern that some children who had been entangled in the violent environment later became active members of the group that initially abducted them. The Working Group's visit to the Central African Republic in 2016 coincided with the beginning of the International Criminal Court trial in the case of *Prosecutor v. Dominic Ongwen*. Ongwen was allegedly abducted by the Lord's Resistance Army when he was 10 years old and later became a top commander in that organization. In December 2015, he was charged with a total of 70 counts of crimes against humanity and war crimes allegedly committed after 1 July 2002 in northern Uganda. In cases where children may have committed acts of atrocity during their association with armed groups,

[14] Dallin Van Leuven, Dyan Mazurana and Rachel Gordon, "Analysing the recruitment and use of foreign men and women in ISIL through a gender perspective", in *Foreign Fighters under International Law and Beyond*, Andrea de Guttry, Francesca Capone and Christophe Paulussen, eds. (The Hague, T.M.C. Asser Press, 2016), pp. 97–220.

[15] Revkin, "I am nothing without a weapon".

[16] A. Dyregrov, R. Gjestad and M. Raundalen, "Children exposed to warfare: a longitudinal study", *Journal of Traumatic Stress*, vol. 15, No. 1 (2002), pp. 59–68.

the Working Group emphasizes that victims hurt by the violent acts of these children may have suffered greatly and that they equally deserve justice and reparation.

F. Gender perspective

40. Boys and girls serve different tasks in armed groups. The majority of girls are recruited for sexual purposes. Research shows that girls abducted by armed groups are almost universally raped.[17] In the contexts of the Syrian Arab Republic and Iraq, girls and women appear to be used by armed groups as part of the recruitment appeal to boys and men. For groups with state-like ambitions, marrying off girls and women also helps ensure a future generation of supporters and bolsters their nation-building projects.[18] Girls' participation in armed groups is considered central to sustaining a force because of their productive and reproductive labour.[19] Like the boys, girls associated with armed groups often carry out tasks such as cooking, domestic work and looting. Girls are also forced to participate in combat or carry out suicide missions. In addition, as a result of sexual violence, including rape and sexual slavery, many girls experience forced pregnancy and give birth without any assistance or care. They also have to rear their children, who are expected to become new members of the group. As a result, many girls suffer from sexually transmitted diseases, complications of pregnancy, gynaecological diseases and chronic health problems.

41. Once returned to their communities, girls and women who are perceived to have had sexual relations with members of armed groups, especially those who have brought back their children by combatants of the armed groups, are especially stigmatized. These girls are severely hampered in their reintegration into the local community. Many of the girls are abandoned by their families, despite the fact that they were victims of abduction, rape and other human rights violations. Since most communities consider the children of combatants of armed groups as objects of shame, often the girls are forced to choose between their child and their community.[20] Consequently, many girls, although returned to their communities, are isolated or homeless.

G. Private military and security companies and former child soldiers

42. As wars and military functions continue to be "outsourced" to private military and security companies in order to reduce cost, some companies have reportedly recruited former child soldiers to take part in active combat or guard the military facilities of a State party to the conflict. Owing to the multiple layers of contracts involving subcontractors on the ground, the lack of effective oversight and the absence of a proper vetting process, it is very difficult to know the exact number of former child soldiers recruited by private companies.

43. The Working Group is concerned about allegations of recruitment of former child soldiers from Sierra Leone and Uganda by private military and security companies to execute military operations in Afghanistan, Iraq and elsewhere. The motivations of former child soldiers to engage with private military security companies can result from a failure to reintegrate, especially if the former combatant is not economically reintegrated into the society; for example, if there is a lack of alternative job opportunities. In this context, there is a clear economic motivation from the perspective of these companies, since former child soldiers are considered cheap labour and these former combatants have experience in combat and armed conflict in general. For instance, a Ugandan former child soldier

[17] Susan McKay and Dyan Mazurana, *Where Are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives During and After War* (Montreal, Rights and Democracy, 2004).

[18] O'Neil and Van Broeckhoven, "The road to a better future".

[19] Schauer and Elbert, "The psychological impact of child soldiering".

[20] Redress Trust, *Victims, Perpetrators or Heroes? Child Soldiers Before the International Criminal Court* (London, 2006).

contracted through a private company to guard United States military facilities in Iraq might make $600 a month, with much of it owed back to the brokers and middlemen who helped him get from Africa to Mesopotamia. The Ugandan could also be fined by his supervisor up to $100 for lying, sleeping on duty or some other infraction. A supervisor who was a United States citizen might make $20,000 a month, tax free and with benefits, while in Iraq.[21]

44. Among various issues related to former child soldiers and private military and security companies, the Working Group stresses that, in the vetting process, recruiting companies should distinguish those individuals who have committed war crimes or human rights violations when they were associated with armed groups from those who were not responsible for crimes that were committed. While individuals who have committed war crimes or human rights violations are not suitable for security services, it is essential to fight against stigmatization and discrimination to ensure that individuals who have not been convicted of any crime, but have merely formerly associated with armed groups, have access to the job market. The Working Group emphasizes that States are obliged to provide appropriate social reintegration, including vocational training, and psychological recovery services for former child soldiers (see Committee on the Rights of the Child general comment No. 16).

45. Taking into consideration the violent experiences to which children are exposed during their association with armed groups, to assist their psychological recovery it is crucial to avoid subjecting them to situations where they are at risk of being re-traumatized. Research shows that the cascades of defence mechanisms that a survivor has gone through during the traumatic event can replay themselves whenever the fear network, which has evolved peritraumatically, is reactivated by internal or external triggers.[22] Thus security related tasks with private military and security companies should not be considered as appropriate for children who have been associated with armed groups. Job openings such as administrative, logistics and other general supporting service posts at private military and security companies might attract former child soldiers, especially those who do not have alternative opportunities. Nevertheless, the Working Group is of the view that, although these job opportunities could be a form of reintegration of former child soldiers, they should only be considered as a last resort.

F. Responses to children associated with non-State armed groups

46. In April 1997, as part of the effort to address the issue of children serving in armed forces, non-governmental organizations and the United Nations Children's Fund (UNICEF) held a symposium in Cape Town, South Africa, to develop strategies for preventing recruitment of child soldiers into the armed forces and for demobilizing child soldiers and helping them reintegrate into society. The Cape Town Principles and Best Practice on the Prevention of Recruitment of Children into the Armed Forces and Demobilization and Social Reintegration of Child Soldiers in Africa were the outcome of this symposium.

47. Building upon the Cape Town Principles and Best Practices, in 2007 UNICEF and the Government of France co-hosted the International Conference on Children involved in Armed Forces and Armed Groups: Free Children from War. During this conference, the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups were developed to protect children from unlawful recruitment or use by armed forces or armed groups. The principles and guidelines were intended to influence the behaviour of a broad range of actors, including States, military and security actors (State and non-State), human rights actors, humanitarian actors, development actors and associated organizations, including United Nations organizations, other intergovernmental actors, national and international organizations and community-based organizations. While some of these actors have a specific mandate or role in relation to children, all have a role to play and broad

[21] Peter Van Buren, *We Meant Well: How I Helped Lose the Battle for the Hearts and Minds of the Iraqi People* (New York, Metropolitan Books, 2012).

[22] Schauer and Elbert, "The psychological impact of child soldiering".

responsibility for the rights and well-being of children associated with armed forces or groups. Ministers and representatives of countries that participated in the Paris conference endorsed the principles through a declaration, the Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups.

48. The Working Group welcomes and supports these initiatives at the international level. At the national level, the Working Group urges States to take legislative measures to criminalize the recruitment and use of children in hostilities and bring perpetrators to justice. The Working Group emphasizes that States bear the primary responsibility in protecting the rights of the child and must prevent the recruitment of children into government armed forces. The Special Representative of the Secretary-General for Children and Armed Conflict pointed out in her report (document A/HRC/37/47) that the engagement of the United Nations with government armed forces also catalysed interaction with non-State armed groups to respond to and prevent violations. She further stated that over 50 per cent of armed groups included in the annex to the annual report of the Secretary-General on children and armed conflict for the recruitment and use of children (document A/72/361–S/2017/821) are active in countries where government forces are also listed, illustrating that the actions of armed groups are influenced by the conduct of government forces (see A/HRC/37/47, para. 28).

49. As the time of submission of the present report, 167 Member States of the United Nations are parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which demonstrates their commitment to prohibiting and criminalizing the recruitment and use of children in armed conflicts. Many States do indeed criminalize such practices in their domestic legislation.

50. In addition to criminalizing the recruitment and use of children in hostilities, some States have also demonstrated support for measures that could contribute to the prevention and protection of children from recruitment into conflicts by non-State armed groups. In the United States of America, the Child Soldiers Prevention Act of 2008 prohibits certain forms of United States military assistance to the governments of countries that either recruit or use child soldiers in their armed forces or support armed groups, including paramilitaries, militias or civil defence forces, that recruit and use child soldiers.

51. As of February 2018, 73 States have endorsed the Safe Schools Declaration, which was developed through consultations led by the Governments of Argentina and Norway. States that join this initiative express their commitment to protecting students and educational facilities and ensuring the continuation of education, which could further contribute to the protection of children and youth from exploitation. Preventing the use of educational facilities for military purposes can also reduce the risk of recruitment and use of children by armed groups.

52. The Working Group has noted with concern that many States treat children formerly associated with non-State armed groups as security threats rather than victims. Some States are taking punitive measures against these children. For example, in Afghanistan, Iraq, Lebanon, Libya, Nigeria, Somalia, the Sudan, the Syrian Arab Republic and Yemen, children are deprived of their liberty for their alleged association with armed groups (see A/72/361). This type of response may counteract efforts to separate children from armed groups. It may reduce the possibility of neutrality and is likely to deter children from leaving armed groups.[23] Some States have implemented administrative measures to discourage people from returning from conflict zones, and have gone so far as to refuse to let children back into their countries after suspected involvement with an armed group.[24] Some children also face punishment upon their return to their countries of origin. Many States have explored the removal of citizenship as a way of ensuring that foreign terrorist fighters will find it difficult to return to their home State. Those efforts have applied mainly to people with dual citizenship, in order to avoid their becoming stateless (see A/71/318,

[23] O'Neil and Van Broeckhoven, "The road to a better future".

[24] Drumbl and Rona, "Navigating challenges in child protection".

para. 22). In Australia, children as young as 14 years old could face revocation of their citizenship for accused terrorism offences.[25]

53. Some States have adopted measures to prevent children from travelling abroad to join terrorist groups. However, some of these measures also seem punitive in nature. For instance, in Denmark, authorities may confiscate minors' passports and refuse to issue new ones unless the parents agree. In the Netherlands, the Child Care and Protection Board may impose family supervision, custody in childcare institutions, curfews and confiscation of identity documents of aspiring teenage combatants and children whose parents intend to travel to a conflict zone.[26] Thus, it is essential that States adopt the most appropriate measures that seek protection, and not punishment, of children and their families.

IV. Conclusions and recommendations

General recommendations

54. The Working Group urges Member States to criminalize in national legislation the recruitment and use of children under the age of 18 years in armed conflict. It stresses the importance of investigating, prosecuting and sanctioning those responsible for such crimes at the national level, and providing a remedy to victims of violations committed by all persons and entities within its jurisdiction. The Working Group calls upon Member States to support international efforts in this respect as well.

55. The Working Group urges all Member States that have jurisdiction over private military and security companies that recruit children to put an end to their cooperation with such companies and to prosecute those responsible for such recruitment. Additionally, it recommends that States end any cooperation with or support for any non-State armed groups that recruit and use children in armed conflict.

56. The Working Group urges Member States to treat children allegedly associated with non-State armed groups primarily as victims and to respect the special protections that international law accords children.

57. The Working Group stresses that States should set a minimum age of criminal responsibility below which a child cannot be found to have the capacity to engage in criminal conduct. When children have committed crimes during their association with armed groups, the best interests of the child should remain a primary consideration. This means that judicial proceedings should be undertaken as a last resort, the child should be tried in a juvenile justice system, the privacy of the child should be respected, the child should be able to participate effectively in the proceedings and sentences should be rehabilitative rather than punitive.

58. The Working Group is concerned about the current punitive approach taken by some States to children associated with armed groups and reminds all States of their legal obligation to uphold the principle of the best interests of the child. With regard to the use of detention against children for their alleged association with armed groups, the Working Group is of the view that detention of children should be used only as a last resort in compliance with international juvenile justice standards.

59. The Working Group stresses that responses to the phenomenon of the recruitment and use of children in armed conflict should focus on the separation, rehabilitation and reintegration of children. States should address root causes that foster child recruitment into armed conflicts and take preventive, not punitive, measures aimed at protecting children from being recruited into armed conflict.

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[25] Francesca Capone, "'Worse' than child soldiers? A critical analysis of foreign children in the ranks of ISIL", *International Criminal Law Review*, vol. 17, No. 1 (2017), pp. 161–185.

[26] Ibid.

60. **The Working Group stresses that reintegration of children who have been associated with armed groups is crucial to ensure long-lasting peace, security and sustainable development in post-conflict societies. Failure to reintegrate this group of children socially and economically into society may increase the risk of re-recruitment of these individuals and can cause substantial economic development issues in the community and society at large.**

61. **The Working Group encourages Member States to establish mechanisms for the reintegration into society of children who have been associated with armed groups. The reintegration process should include psychosocial and education programmes and vocational training. Specific attention should be paid to girls to address their social and psychological needs.**

62. **The Working Group encourages States to demonstrate their commitment to protecting children in the context of armed conflict by ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. States are also encouraged to endorse the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups to protect children unlawfully recruited or used by armed forces or armed groups.**

Recommendations related to private military and security companies

63. **Job openings with PMCSs might seem attractive as a potential solution for the reintegration of former child soldiers. The Working Group emphasizes that the re-recruitment of former child soldiers into the security industry does not help to break the cycle of violence. Owing to the nature of the industry, the work environment may trigger children's memory of the traumatic events they have experienced during their association with the armed group. Thus the Working Group stresses that security-related tasks at private military and security companies should not be considered as primary options for former child soldiers. When there is no alternative solution, administrative, logistics and general supporting service posts at private military security companies could be considered as a last resort to reintegrate former child soldiers.**

64. **The Working Group notes that, in Switzerland, the Federal Act on Private Security Services Provided Abroad requires all undertakings governed by the Act to declare their activities abroad to the Private Security Services Section and to become a member of the International Code of Conduct for Private Security Service Providers. The Working Group encourages Member States to include similar provisions in their domestic legislation.**

Recommendations related to the International Code of Conduct for Private Security Service Providers' Association and the Montreux Document Forum

65. **While the International Code of Conduct for Private Security Service Providers clearly requires the commitment from its signatory companies not to hire individuals under the age of 18 to carry out security services, the Working Group emphasizes that the International Code of Conduct for Private Security Service Providers' Association should put in place safeguards to ensure that not only its signatory companies but also all subcontracting companies are in compliance with this requirement.**

Recommendations related to non-State armed groups

66. **The Working Group welcomes the signing of action plans to prevent the recruitment and use of children in armed conflict, concluded between the United Nations and non-State armed groups listed in the annex to the annual report of the Secretary-General on children and armed conflict regarding the recruitment and use of children.**

67. The Working Group urges all non-State armed groups to end the recruitment and use of children under the age of 18 years and to cooperate with efforts to separate children who are associated with armed groups from those groups.